

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

Upon entry of the foregoing amendments, claims 10-33 are cancelled and claims 34-57 are added, whereby claims 34-57 will be pending, with claims 33, 49 and 55 being independent claims.

Support for the new claims can be found throughout the present specification and in the cancelled claims.

Applicants emphasize that the cancellation of claims 10-33 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statement filed November 30, 2006 by returning a signed and initialed copy of the Form PTO-1449 submitted therein. In this regard, it is pointed out that a Supplemental Information Disclosure Statement is being filed concurrently herewith. Accordingly, the Examiner is respectfully requested to indicate consideration of the Supplemental Information Disclosure Statement by returning a signed and initialed copy of the Form PTO-1449 submitted therein with the next official communication.

Applicants also note with appreciation that the Examiner has acknowledged the claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f) and the receipt of certified copies of the priority

documents from the International Bureau.

Claims 10-24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 10, 12-24 and 33 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Rubino, U.S. Patent No. 3,991,176 (hereafter “RUBINO”).

Claims 10, 11 and 25-32 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RUBINO in view of Gross, U.S. Patent No. 7,189,406 (hereafter “GROSS”).

Claims 10-23, 25, 27, 30 and 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 16-27, 35, 38, 40 and 43 of copending Application No. 10/574,219.

Claims 10-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 16, 17, 25, 36 and 37 of copending Application No. 10/574,230.

Claims 10-13, 15, 16, 19, 21, 23, 25 and 30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 43, 51-53, 56-59, 64, 75 and 81 of copending Application No. 11/586,585.

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested, in view of the foregoing amendments and the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 112, Second Paragraph

Claims 10-24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The rejection essentially alleges that the language “at least one of ... and...” in the rejected claims renders these claims indefinite.

Applicants respectfully (and strongly) disagree with the Examiner in this regard. At any rate, the rejected claims are cancelled, wherefore this rejection is moot.

Response to Rejection of Claims under 35 U.S.C. § 102(b)

Claims 10, 12-24 and 33 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Rubino, U.S. Patent No. 3,991,176 (hereafter “RUBINO”).

Applicants respectfully disagree with the Examiner’s allegations in this regard. At any rate, the rejected claims are cancelled, wherefore this rejection is moot as well.

Regarding the claims submitted herewith, it is pointed out that present independent claims 34 and 55 recite mandelic acid as one of the components of the claimed cosmetic or dermatological formulation. RUBINO does not disclose mandelic acid (as explicitly acknowledged by the Examiner) and for this reason alone, is unable to anticipate the subject matter of present claims 34 and 55.

The third independent claim submitted herewith, claim 49, recites that the antiperspirant active ingredient of the formulation claimed therein consists of one or more aluminum salts. This excludes zirconium compounds, i.e., mandatory components of the antiperspirant complexes disclosed by RUBINO. Accordingly, RUBINO fails to anticipate the subject matter of claim 49 as

well.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 10, 11 and 25-32 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RUBINO in view of Gross, U.S. Patent No. 7,189,406 (hereafter “GROSS”). The rejection concedes that RUBINO does not use mandelic acid as the α -hydroxycarboxylic acid in the aluminium-zirconium antiperspirant complexes disclosed therein but essentially alleges that GROSS renders the use of mandelic acid in the complexes of RUBINO obvious to one of ordinary skill in the art.

Applicants respectfully disagree with the Examiner’s allegations in this regard as well. At any rate, the rejected claims are cancelled, wherefore this rejection is moot.

With respect to independent claim 49 submitted herewith it is pointed out again that the antiperspirant active ingredient of the formulation recited therein consists of one or more aluminum salts. In contrast, the antiperspirant active ingredient of RUBINO comprises a combination (complex) of a basic aluminum compound, a zirconium compound and a hydroxycarboxylic acid (see, e.g., abstract of RUBINO). Neither RUBINO nor GROSS teaches or suggests that in the complex of RUBINO the zirconium compound can be dispensed with and for this reason alone, RUBINO in view of GROSS is unable to render obvious the subject matter of claim 49 (and the claims dependent therefrom).

Independent claims 34 and 55 submitted herewith both recite, *inter alia*, the presence of mandelic acid in the cosmetic or dermatological formulations claimed therein. While RUBINO discloses a number of hydroxycarboxylic acids for use in the antiperspirant complexes taught

therein, the list of exemplary acids (a total of 12 acids) does not include mandelic acid, and neither does this list include any aromatic ring containing acid (see col. 4, lines 23-26 of RUBINO). In other words, all of the specific acids mentioned by RUBINO are non-aromatic acids, thereby even teaching away from the use of an acid such as mandelic acid.

GROSS is unable to cure the deficiency of RUBINO. In fact, there is no motivation for one of ordinary skill in the art to combine the teachings of RUBINO and GROSS. Specifically, according to col. 1, lines 17-20 of RUBINO the invention disclosed therein “is directed to water soluble complexes of zirconium which have a sufficiently high pH to be acceptable in anti-perspirant formulations for application to the human axilla”.

In comparison, the invention of GROSS “relates to dermatological compositions and methods, and more particularly to compositions and methods for use by consumers for the topical treatment of skin aging, acne, etc. and for the improvement of skin appearance” (col. 1, lines 6-10 of GROSS). It is not seen that someone who wishes to improve or modify the (antiperspirant) formulations of RUBINO (which are to be applied to the human axilla) is interested in providing a formulation which not only has antiperspirant activity but also treats aging of the skin or acne of the armpit or improves the appearance of the skin of the armpit.

At any rate, the acid disclosed by GROSS also has a function which is completely different from the function of the hydroxycarboxylic acid which is used in the antiperspirant complexes of RUBINO, which is yet another reason why GROSS is unable to render it obvious to one of ordinary skill in the art to use any of the acids disclosed therein and in particular, mandelic acid as the hydroxycarboxylic acid in the antiperspirant complexes of RUBINO.

In this regard, it is noted that GROSS states in col. 2, lines 43-56 thereof, (emphasis added):

The present invention is directed to a two-step acid peel for the skin gentle enough for use by the consumer at home but capable of providing an improvement in the skin comparable to results previously obtainable only by professionals using higher concentrations of acid. This method comprises the steps of applying to the skin a first composition comprising a skin renewing acid component in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4, and neutralizing the first composition by applying to the skin a second composition comprising an alkaline agent and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7.

In other words, the acid of GROSS is used as such in the first step of a peeling method (and is neutralized in the second step of the method by a neutralizing agent).

In contrast, the hydroxycarboxylic acid of RUBINO is not employed as such but in the form of a complex. For example, in col. 2, lines 3-15, RUBINO states:

According to the present invention, it has been found that effective anti-perspirant compositions may be achieved by forming a water soluble complex which comprises a combination of a basic aluminum compound, a zirconium compound selected from zirconium oxy salts, zirconium hydroxy salts and mixtures thereof, and a hydroxy carboxylic compound selected from non-toxic salts of hydroxy carboxylic acids, non-toxic salts of aluminum chelates of hydroxy carboxylic acids, codried mixtures of aluminum hydroxide with non-toxic salts of aluminum chelates of hydroxy carboxylic acids, and mixtures thereof.

Even further, regarding the acid for use in the first step of the peeling method taught therein, GROSS states in col. 3, lines 46-67 (emphasis added):

The skin-renewal stimulating acid can be a hydrophilic acid or other acid-equivalent electronegatively hydrophilic organic compound selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids and related compounds. Preferred compounds have a relatively lower molecular weight as higher molecular weight compounds tend to be hydrophobic and may have too little activity. Since the smallest molecules such as formic acid, are unduly aggressive, a preferred molecular weight range is from about 50 to about 250.

Preferred acids include alpha-hydroxy acids, salicylic acid and other beta hydroxy acids, and combination thereof. Preferably the composition of Step 1 includes at least one alpha hydroxy acid selected from the group consisting of glycolic acid, lactic acid, malic acid, tartaric acid, citric acid and ascorbic acid. Other preferred skin-renewal stimulating acids

include mandelic acid, azelaic acid, glyceric acid, tartronic acid, gluconic acid, benzylic acid, pyruvic acid, ethyl pyruvate, 2-hydroxybutyric acid, salicylic acid, and mixtures thereof. Mineral acids in appropriate concentrations also may stimulate skin cell renewal as well as non-hydroxy acids, for example trichloracetic acid.

Accordingly, GROSS discloses a number of most diverse acids which can be used in the first step of the peeling method taught therein. Mandelic acid is not even among the acids which are preferably used in this method. In line therewith, none of the compositions of Examples 1 to 3 of GROSS comprises mandelic acid. Instead, all of these compositions comprise salicylic acid, lactic acid and glycolic acid, i.e., acids which are completely unrelated to mandelic acid.

Applicants submit that for at least all of the foregoing reasons, RUBINO in view of GROSS fails to render obvious also the subject matter of present claims 34 and 55 (and the claims dependent therefrom).

Response to Provisional Rejections of Claims

Claims 10-23, 25, 27, 30 and 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 16-27, 35, 38, 40 and 43 of copending Application No. 10/574,219; claims 10-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 16, 17, 25, 36 and 37 of copending Application No. 10/574,230; and claims 10-13, 15, 16, 19, 21, 23, 25 and 30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 43, 51-53, 56-59, 64, 75 and 81 of copending Application No. 11/586,585.

Applicants note that the rejected claims are cancelled, wherefore these provisional rejections are moot as well.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Ulrike SCHULZ et al.


Neil F. Greenblum
Reg. No. 28,394

May 5, 2009
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, Virginia 20191
(703) 716-1191

Heribert F. Muensterer
Reg. No. 50,417